



# ARM 24.29.1407

## Update Definition of Prosthesis

BY REQUEST OF THE MONTANA DEPARTMENT OF LABOR & INDUSTRY

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### SUMMARY OF CHANGES

**The Department has identified a need to define the term “prosthesis” for the purposes of identifying claims exempt from the requirement to petition for reopening medical benefits at 60-months.**

### OVERVIEW OF DEPARTMENT’S POSITION

- Providing benefits that adequately address the permanent functional consequences of an occupational injury is the cornerstone of Workers’ Compensation.
- There is currently no definition of prosthesis in the Montana Workers’ Compensation system.
- The addition of a definition only impacts injured workers with a previously accepted claim as it relates to the need for reopening medical benefits.
- To reopen benefits at 60 months, the benefit must be needed to assist the injured work to either stay at work or return to work (39-71-717, MCA). The injured worker is exempt from the reopening process in cases where there is a permanent total disability or occupational disease or for the **repair or replacement of a prosthesis**.
- The reopening process was implemented because of the Workers’ Compensation reform package of 2011 (HB 334). The first reopening petitions occurred in 2016.
- The basic question is: who is liable for benefits such as hearings aids when someone is at retirement age and can no longer return to work?
- Right now, there is a 40-year veteran of the Cascade County Sheriff’s office who can’t get hearing aid replacements because the benefit is not needed to keep or return him to work.
- An audiologic report provided during another reopening petition said, “without hearing aids, he definitely struggles to communicate and is at a significant disadvantage.”
- The Department has proposed rule changes to streamline the reopening process and to provide clarity to insurers who are not applying a uniform definition of prosthesis.
- The rule aligns well with current medical definitions for prosthesis, which indicate that prosthesis includes devices such as hearing aides that are designed to augment natural function.
- Additionally, in Mellinger vs. Montana (2018 MT Work Comp Court case), Judge Sandler said, in referring to a prosthesis, that the Legislature intended for a broader definition in the WCA.

### EXPLANATION OF CHANGES

Based on the information above, it is evident to the Department there is a need to adopt the proposed rules. Furthermore, there is uncertainty among both insurers and injured workers on how and when the definition should be applied. The proposed rules provide needed clarity.



Montana Department of  
**LABOR & INDUSTRY**

24.29.1407 PROSTHETIC DEVICES (1) For the purposes of identifying what constitutes a prosthesis not subject to the automatic 60-month closure of medical benefits under 39-71-704, MCA, the term "prosthesis" means, with respect to a body part or organ missing or damaged as the direct result of a workplace accident or occupational disease:

(a) an artificial substitute to replace that body part or organ; or  
(b) prescription eye glasses, prescription contact lenses and hearing aids prescribed as a result of a compensable occupational injury or disease. a device to augment the functioning of that body part or a sense organ.

(2) Examples of a prosthetic device include are:

- (a) an artificial joint;
- (b) an artificial eye;
- (c) an artificial limb; and
- (d) an artificial tooth, including dentures.

~~(3) Examples of a prosthetic device that augments function of a sense organ are include:~~

- ~~—— (a) prescription eye glasses;~~
- ~~—— (b) prescription contact lenses; and~~
- ~~—— (c) dentures; and~~
- ~~—— (d) hearing aids.~~

AUTH: 39-71-203, MCA

IMP: 39-71-704, 39-71-717, MCA